

REMARKS

Claims 1-9 remain pending, and, of those, claims 7-9 are currently amended. No claims are canceled or added.

The drawings stand objected to for various reasons, as discussed in the Office Action on pages 2 and 3. Regarding some of the reasons provided on page 2, applicants respectfully disagree that those reasons justify objections.

The Office Action indicates that the basis for objections is 37 C.F.R. § 1.84(p)(5). However, 37 C.F.R. § 1.184(p)(5) merely states:

Reference characters not mentioned in the description shall not appear in the drawings. Reference characters mentioned in the description must appear in the drawings.

The Office Action lists many reference characters, which appear in the drawings, as not mentioned in the description, and the Office Action also lists reference characters, which are mentioned in the description, as not appearing in the drawings. However, for many of the reference characters listed, they do in fact appear in the drawings and are mentioned in the description. Therefore, listing those reference characters in the Office Action does not justify the objection.

For example, the Office Action indicates in paragraph No. 1 on page 2 that reference character “DB” is not mentioned in the description. This is incorrect. The reference character is mentioned on page 6, line 18.

Applicants of course acknowledge that reference character “DB,” appearing in Fig. 3, is mentioned in the description in an area that concentrates more on Fig. 1. However, 37 C.F.R. § 1.184(p)(5) does not require that an applicant must provide a separate definition for reference characters for each drawing figure. Applicant’s Brief Description of the Drawings, beginning on

page 5, introduces all figures, and a person skilled in the art would easily understand that the “DB” recited on page 6 and the “DB” appearing in Fig. 3 correspond to the same element.

In some cases, indeed the description does not mention a reference character, which appears in the drawings. For example, Fig. 1 shows “DB1,” and the description only mentions the more general term “DB.” Although applicants believe that a person skilled in the art would have little if any difficulty understanding that the “DB” recited on page 6 refers to the “DB1” (and “DB2,” “DB3,” and “DB4”) in Fig. 1, as well as the “DB” in Fig. 3, applicants acknowledge that the display of “DB1” in the drawings without *explicit* mention of it in the description does not literally conform to 37 C.F.R. § 1.184(p)(5). Accordingly, applicants amend the specification and the drawings to provide the desired information.

To show readily the correspondence of the description to the drawings, applicants provide the following table:

Reference Character	Appearance in Drawings	Mention in Description
DB1, DB2, DB3, and DB4	Fig. 1	Added via Amendment
14	Fig. 2	Page 11, line 7
16	Fig. 2	Page 10, line 21
DB	Fig. 3	Page 6, line 18
P1 and P2	Fig. 2	Page 6, lines 24 & 25
1 and 2	Figs. 1 & 2	Page 6, lines 12 & 22
S8	Added via Amendment	Page 10, line 19
2b	Fig. 2	Page 7, line 12
1b	Fig. 2	Page 7, line 9

The Office Action indicates on page 3 that Figs. 4 and 5 are objected to because they have no reference characters. Fig. 5, however, is a table, so it does not need reference characters. Regarding Fig. 4, applicants amend the figure as shown in the Enclosure to have reference characters.

The Office Action also indicates that Fig. 1 presents *Kanji* characters. Applicants respectfully respond that the Japanese text is *katakana*. The word “タ ッ プ” (“tap”) represent the tapping of physical lines, as discussed in the specification, for example, in the paragraph beginning on page 6 at line 14. Because the specification adequately describes this feature, the term does not need to remain in Fig 1.

In view of the foregoing amendments and remarks, applicants now request the withdrawal of the objections to the drawings.

Applicants also request the withdrawal of the objection to the Abstract of the Disclosure. As shown above, the Abstract is amended to remove the reference characters.

Claims 1-9 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Applicants respectfully traverse this rejection.

The Office Action indicates that the claims are not directed to programs on computer-readable media, and applicants respectfully disagree. Note, for example, the recitation of “management application program” in base claims 1 and 4. As explained in the specification, page 6, line 23, a “management application program” may be stored in a disk device. It cannot be rightfully argued that a management application program stored in a disk device is not a program on computer-readable media – even if it is possible, outside of the context of the present specification, to apply the term “management application program” to an activity of persons standing on a street corner. (The Office Action also fails to explain why the briefly-described traffic analysis activity could not itself be the subject of statutory method claims).

Also, under 35 U.S.C. § 112, sixth paragraph, an element in a claim for a combination expressed as a means or step for performing a function without the recital of structure or acts in support thereof shall be construed to cover the corresponding structure or acts described in the

specification and equivalents thereof. Accordingly, note the examples of the claim 1 element “means for loading a management application program ...” and the claim 4 element “allowing said manger to load and execute a management application program.” The corresponding structure and acts in the specification, for example, in the paragraph bridging pages 6 and 7 and elements 1, 3, and P1 in Figs. 1-3, clearly show that the claimed elements are programs on computer-readable media.

Therefore, the explanation in the Office Action does not justify a rejection under 35 U.S.C. § 101. Accordingly, applicants request the withdrawal of the rejection.

The Office Action indicates at the top of page 5 that claims 1 and 4 are rejected under 35 U.S.C. § 102(e) as anticipated by *Mayton et al.* (U.S. Patent No. 6,763,380). Later, the Office Action implies that claims 7-9 also stand rejected on the same grounds. Applicants respectfully submit that the rejection is improper.

Claim 1 describes a traffic management system comprising a manager that has:

means for delivering a traffic analysis program to each of said active monitors.

Claim 4 describes a traffic monitoring method having steps of both:

allowing said manager to request said active monitors to load a traffic analysis program,

and

allowing said active monitors to load and execute the traffic analysis program in response to said load request.

Claims 7-9 depend from claim 4, so they also recite this subject matter.

Therefore, to justify the anticipation rejection, the Office Action would need to indicate where in the *Mayton et al.* disclosure the above-quoted subject matter is discussed. However, with respect to base claims 1 and 4, the Office Action only repeats the text of claim 1, cites

blocks of text from *Mayton et al.*, and states that the cited material is the anticipating subject matter. Then, the Office Action states that *Mayton et al.* discloses some of the claimed subject matter and that another part of the claimed subject matter is inherent according to a DARPA definition. (The definition itself is not provided.)

Because no showing is provided of how *Mayton et al.* supposedly discloses the subject matter quoted above, the rejection has not been justified and therefore should be withdrawn for at least this reason alone. Nonetheless, applicants have searched *Mayton et al.* independently for anticipating subject matter, and the quoted subject matter from the claims could not be found.

Applicants acknowledge the citation in the Office Action of column 5, line 66, to column 6, line 13, but the Office Action does not indicate the claim element(s) to which this text relates. Applicants can speculate that the rejection is based on the belief that the *Mayton et al.* console node 20 teaches the “manager” recited in the claims, because the cited text states that console node 20 might provide network performance device tracking. Perhaps the rejection is based on an understanding that console node 20 has means for loading and executing a management application program.

However, applicants find no teaching of console node 20 delivering a “traffic analysis program” to an active monitor tapping a physical line. Because console node 20 is already described as able to provide network performance device tracking, applicants see no reason why (based on prior art teachings and not on applicant’s disclosure) someone would think of delivering a program to the active monitors to analyze traffic. Although it might be advantageous to configure the active monitors to perform some of the traffic analysis on data and then send the results to console node 20, applicant find no teaching that the traffic analysis

programs would be delivered from console node 20 instead being loaded by a technician on site or prior to installation of the active monitors on site.

Thus, it remains that no disclosure is identified in *Mayton et al.* of a traffic monitor system in which a manager has “means for delivering a traffic analysis program to each of said active monitors,” and neither is any disclosure identified of a traffic monitoring method having steps of both “allowing said manager to request said active monitors to load a traffic analysis program” and “allowing said active monitors to load and execute the traffic analysis program in response to said load request.” Although the remarks provided thus far should suffice for withdrawal of the anticipation rejection, applicants nonetheless elaborate further regarding the distinctions between the present invention and both *Mayton et al.* and DARPA active network theory.

Regarding the distinction between the present invention and *Mayton et al.*, *Mayton et al.* does not disclose a manager, which delivers a traffic analysis program to an active monitor. End point nodes 14-17 and console node 20 (Fig. 2) of *Mayton et al.* are partially analogous to the active monitor and the manager, respectively, of the present invention. However, each of end point nodes 14-17 has an analysis program stored in advance, and console node 20 only sets a parameter and a flag of the program. Console node 20 cannot deliver the program itself.

Applicants acknowledge again the reference in the Office Action of the DARPA active networking theory as a disclosure of delivering a traffic analysis program to a monitor. However, as discussed below, DARPA active network theory does not suggest delivering the program to the active monitor of the present invention.

Regarding the distinction between the present invention and DARPA active network theory, the DARPA active network theory suggests two approaches, a programmable switch

approach and a capsule approach, as basic architecture. In the programmable switch approach, a program to be executed within a network has to have been downloaded to a router in advance. An ID is stored in a packet, which requires processing within the network, to identify the program to be executed. Within the router, the processing proceeds in accordance with a program indicated by this ID when the packet arrives. In the capsule approach, the program to be executed within the network is stored in each packet and transferred. In each router, a common processing system is prepared and processing proceeds in accordance with the program stored in the packet.

Thus, according to the DARPA active network theory, the router and a switch through which the packet passed operate actively and an apparatus through which no packet passed cannot actively operate differently from the active monitor of the present invention. Also, in the programmable switch approach, no program is downloaded to the router. Further, in the capsule approach, the program stored in the packet is executed by the router, but this program is never downloaded to the router. Additionally, the program to be executed in each router only processes the packet transferred through the router; it cannot analyze traffic. Then, the program to be executed in each router is not provided with the function of notifying the manager with the analysis result.

Thus, even by combining the *Mayton et al.* disclosure with DARPA active network theory, the claimed invention, which includes a traffic analysis program to be executed in an active monitor delivered from a manager, cannot be derived.

Applicants conclude by noting that the *Mayton et al.* console node 20 does not deliver the program to each endpoint node 14-17. Also, only a node (whether a router or a switch) through which a packet passes can operate actively according to DARPA active network theory. An

apparatus through which no packet passes cannot operate actively, and thus the apparatus differs from the active monitor of the present invention. Further, DARPA active network theory is a technology that actively operates a node through which a packet passes by selecting a program downloaded to each node in advance by an ID included in the packet or by executing the program included in the packet but which cannot download the program to the node.

Thus, the combination of the *Mayton et al.* disclosure in view of DARPA active network theory as discussed in the Office Action does not properly justify the rejection. Accordingly, applicants now request that the rejection be withdrawn.

Claims 2, 3, 5, and 6 are rejected under 35 U.S.C. § 103(a) as obvious over *Mayton et al.* in view of *Hanchett* (U.S. Patent No. 6,834,301). Applicants respectfully traverse this rejection.

The rejection of claims 2, 3, 5, and 6 is based on *Mayton et al.* anticipating base claims 1 and 4. However, as explained above, the anticipation rejection of claims 1 and 4 is not proper. Therefore, the obviousness rejection of claims 2, 3, 5, and 6 also is not proper.

Accordingly, applicants solicit the withdrawal of the obviousness rejection.

In another matter, applicants amend claims 7-9 as shown above to address an informality.

In view of the remarks above, applicants now submit that the application is in condition for allowance. Accordingly, a Notice of Allowability is hereby requested. If for any reason it is believed that this application is not now in condition for allowance, the Examiner is welcome to contact applicants' undersigned attorney at the telephone number indicated below to discuss resolution of the remaining issues.

If this paper is not timely filed, applicants petition for an extension of time. The fee for the extension, and any other fees that may be due, may be debited from Deposit Account No. 50-2866.

Respectfully submitted,
WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP

A handwritten signature in black ink, appearing to read 'J. Felber', with a long horizontal flourish extending to the right.

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Enclosure: Replacement drawings

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Amendments to the Drawings

Figs. 1, 3, and 4 are amended as shown in the Enclosure.

In Fig. 1, the two recitations of the Japanese word “タ ッ プ” are removed.

In Fig. 3, the label “S8” and corresponding leader line are added.

In Fig. 4, reference characters for the depicted elements are provided.